

(a) Before performing any corrective work involving facilities of the other Party, SWBT or MCIIm shall attempt to notify the other Party. After such notice has been given, SWBT and MCIIm shall coordinate corrective work.

(b) When an emergency situation exists such that advance notice and coordination are not practicable, SWBT or MCIIm may perform corrective work without first giving notice to the other Party and shall promptly notify the other Party of the corrective work performed and the reason why notice was not given.

15.07 Emergency Pole Replacements. MCIIm will cooperate fully with SWBT when emergency pole replacements are required.

(a) When emergency pole replacements are required, SWBT shall promptly make a good faith effort to contact MCIIm, to notify MCIIm of the emergency, and to determine whether MCIIm will respond to the emergency in a timely manner.

(b) If notified by SWBT that an emergency exists which will require the replacement of a pole, MCIIm shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to a SWBT replacement pole, the transfer shall be in accordance with SWBT's placement instructions.

(c) If MCIIm is unable to respond to the emergency situation immediately, MCIIm shall so advise SWBT and thereby authorize SWBT (or any joint user sharing the pole with SWBT) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on MCIIm's behalf.

15.08 MCIIm to Bear Expenses. MCIIm shall bear all reasonable expenses arising out of or in connection with emergency repairs of its facilities and transfers or rearrangements of its facilities associated with emergency pole replacements made in accordance with the provisions of Section 15.

(a) MCIIm shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of MCIIm's facilities.

(b) MCIIm will reimburse SWBT for the costs incurred by SWBT for any work reasonably performed by SWBT on MCIIm's behalf in accordance

with the provisions of Section 15; provided, however, that when the costs incurred by SWBT are for work performed in part for MCIIm and in part for SWBT or third parties, MCIIm shall only reimburse SWBT for MCIIm's pro-rata share of the costs.

Section 16: Inspection by SWBT of MCIIm's Facilities

16.01 SWBT's Right to Make Periodic or Spot Inspections. SWBT shall have the right, but not the duty, to make periodic or spot inspections at any time of MCIIm's facilities attached to SWBT's poles or placed within SWBT's poles, ducts, conduits, or rights-of-way. Such inspection may be conducted for the purpose of determining whether facilities attached to SWBT's poles or placed in SWBT's conduit system are in compliance with the terms of this Agreement and licenses hereunder. SWBT may charge MCIIm for inspection expenses only if the inspection reflects that MCIIm is in substantial noncompliance with the terms of this Agreement. If the inspection reflects that MCIIm's facilities are not in compliance with the terms of this Agreement, MCIIm shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance.

16.02 Report of Inspection Results. SWBT will provide MCIIm the results of any inspection of MCIIm's facilities performed under Section 16.01 of this Agreement.

Section 17: Tagging of Facilities and Unauthorized Attachments

17.01 Facilities to Be Marked. MCIIm shall tag or otherwise mark all of MCIIm's facilities placed on or in SWBT's poles, ducts, conduits, and rights-of-way in a manner sufficient to identify the facilities as MCIIm's facilities.

17.02 Removal of Untagged or Unauthorized Facilities. Subject to the provisions of subsections (a)-(d) of this section, SWBT may, without notice to any person or entity, remove from SWBT's poles or any part of SWBT's conduit system any untagged or unmarked facilities, including any such facilities owned or used by MCIIm, if SWBT determines that such facilities are not the subject of any current license authorizing their continued attachment to SWBT's poles or occupancy of SWBT's conduit system and are not otherwise lawfully present on SWBT's poles or in SWBT's conduit system.

(a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are being used by MCIIm or any other firm, are authorized by any license subject to this Agreement, or are otherwise lawfully present on SWBT's poles or in SWBT's conduit system

(b) SWBT shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.

(c) If the facilities appear to be facilities authorized by a current license subject to this Agreement or otherwise lawfully present, SWBT shall give written notice to MCIm requesting MCIm to tag or mark the facilities within sixty (60) days and MCIm shall either tag the facilities within sixty (60) day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If MCIm disclaims ownership of or responsibility for the facilities, MCIm shall disclose to SWBT the identity of the owner or other person or entity thought by MCIm to be responsible for the facilities.

(d) If the facilities appear to be facilities used by MCIm but not subject to a current license granted under this Agreement, the provisions of Sections 17.04-17.11 shall apply.

17.03 Updating of Plant Location Records. MCIm shall furnish SWBT, upon request, with such information as may from time to time be necessary for SWBT to correct and update SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space.

17.04 Notice to MCIm. If any of MCIm's facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Agreement and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to MCIm advising MCIm that no license is presently in effect with respect to the facilities and that MCIm must, within 60 days, respond to the notice as provided in Section 17.05 of this Agreement.

17.05 MCIm's Response. Within 60 days after receiving a notice under Section 17.04 of this Agreement, MCIm shall acknowledge receipt of the notice and submit to SWBT, in writing, either:

(a) a denial or disclaimer of ownership or other interest in the facilities, together with an explanation of the factual and claimed legal basis for such denial or disclaimer;

(b) a statement that the facilities are the subject of a current license, together with an explanation of the factual and claimed legal basis for MCI's assertion that the facilities are currently licensed, or a statement that no license is required, and an explanation of the factual and claimed legal basis for that assertion; or

(c) an application for a new or amended license with respect to such facilities, together with a full and complete explanation of the circumstances under which such facilities were attached to, placed within, or allowed to remain on or in SWBT's poles or any part of SWBT's conduit system. Such explanation shall include, at a minimum, the following:

(1) the date (or estimated date) when such facilities were attached to SWBT's poles or placed in SWBT's conduit system, and the factual basis supporting MCI's selection of such date (or estimated date); and

(2) the factual basis for MCI's assertion, if any, that decisions to attach, place or allow the facilities to remain on or in SWBT's poles or conduit system were made in good faith and without intent to circumvent SWBT's pole attachment or conduit occupancy licensing requirements.

17.06 Denial or Disclaimer of Ownership or Other Interest. MCI's submission to SWBT of a denial or disclaimer of ownership or other interest in the facilities shall constitute MCI's waiver of any objection MCI may have to SWBT's removal of the facilities. Submission of such a denial or disclaimer shall not be construed as an agreement by MCI to pay any charges associated with removal of the facilities provided, however, that nothing contained in this Section shall prohibit SWBT from invoking the dispute resolution process or filing suit, in a court of competent jurisdiction, to establish that MCI is liable to SWBT for the costs of removal if it is determined that MCI is responsible for the facilities.

17.07 Review by SWBT of Licensing Status. Within thirty (30) calendar days after receiving MCI's statement that the facilities are the subject of a current license or that no license is required, SWBT shall review MCI's explanation of the factual and claimed legal basis for MCI's assertion that the facilities are currently licensed and shall advise MCI, in writing, whether it agrees or disagrees with MCI's assertion. If SWBT agrees with MCI's assertions, the Parties may amend the applicable license, and no further action shall be required of MCI. If SWBT does not accept MCI's position, MCI shall, within thirty (30) calendar days, apply for a new or amended license as provided by Section 17.05(c) of this Agreement.

17.08 Approval of License and Retroactive Charges. If SWBT approves the

application for a new or amended license, MCIm shall be liable to SWBT for all fees and charges associated with the unauthorized attachments as specified in Section 17.10 of this Agreement. The issuance of a new or amended license pursuant to this section shall not operate retroactively or constitute a waiver by SWBT of any of its rights or privileges under this Agreement or otherwise.

17.09 Fees and Charges. MCIm shall be liable to SWBT for all fees and charges associated with any unauthorized pole attachment or conduit occupancy for which it is responsible. License fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and payable if MCIm and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable sixty (60) days after the date of the bill or invoice stating such fees and charges and shall be determined as follows: The parties shall engage in good faith discussions to reach a mutually agreed determination as to the amount due and owing. If the parties are unable to reach agreement, the dispute may be referred by either party to dispute resolution. The parties acknowledge that in some cases, it may be impractical, unduly difficult, or uneconomical to determine the actual amount of fees which would have been due and payable if all licensing requirements had been met. Therefore, if the parties, through good faith discussions fail to reach agreement on the amount due and owing, and if the amount due and owing cannot be determined due to MCIm's inability to provide the information required to determine the correct amount, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees applicable to such attachment or occupancy on the date MCIm is notified by SWBT of the unauthorized attachment or occupancy pursuant to Section 17.05 of this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, MCIm shall rearrange or remove its unauthorized facilities at SWBT's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SWBT or another joint user, and shall pay SWBT for all costs incurred by SWBT in connection with any facilities rearrangements, modifications, or replacements necessitated as a result of the presence of MCIm's unauthorized facilities.

17.10 Removal of Unauthorized Attachments. If MCIm does not apply for a new or amended pole attachment license with respect to unauthorized facilities within the specified period of time or if such application is received and specifically disapproved, SWBT shall by written notice request to MCIm to remove its unauthorized facilities not less than sixty (60) days from the date of notice and MCIm shall remove the facilities within **such sixty (60) day period**. If the facilities have not been removed within the time specified in the notice, SWBT may, at SWBT's option, remove MCIm's facilities at MCIm's expense.

17.11 No Ratification of Unlicensed Attachments or Unauthorized Use of SWBT's Facilities. No act or failure to act by SWBT with regard to any unlicensed attachment or occupancy or unauthorized use of SWBT's facilities shall be deemed to constitute a ratification by SWBT of the unlicensed attachment or occupancy or unauthorized use.

Section 18: Removal of MCIIm's Facilities

18.01 MCIIm Responsible for Removing Facilities. MCIIm shall be responsible for removing its facilities from SWBT's poles, ducts, conduits, and rights-of-way and shall bear all expenses arising out of or in connection with the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way in accordance with the provisions of this section.

(a) MCIIm shall give SWBT, when practicable, at least thirty (30) days' advance notice in writing of its intent to remove facilities from any part of SWBT's conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name and telephone number of the manager responsible for removal of the facilities, and the estimated dates when removal of the facilities will begin and end.

(aa) MCIIm shall, if requested by SWBT to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by MCIIm.

(b) Except as otherwise agreed upon in writing by the Parties, MCIIm must, after removing its facilities, plug all previously occupied ducts at the entrances to SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its operations, provided that such standards have been communicated in writing to MCIIm at least sixty (60) days in advance of the removal of MCIIm's facilities.

(c) MCIIm shall be solely responsible: (1) for the removal of its own facilities, and (2) for paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of MCIIm's facilities from SWBT's poles, ducts, conduits, or rights-of-way, and (3) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

(d) When MCIIm no longer intends to occupy space on a pole or in a conduit, MCIIm will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities

from the space described in the notice. Upon removal of MCIm's facilities, the license shall terminate and the space shall be available for reassignment.

18.02 **Removal of Facilities Not in Active Use.** At SWBT's request, MCIm shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of MCIm's facilities which are no longer in active use provided, however, that MCIm shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. MCIm shall not be required to remove retire or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless removal expenses are paid by the person or entity requesting removal of such facilities. MCIm shall not be required to remove cables that would require excavation to remove unless the person or entity requesting removal of such cables bears the expenses of such excavation in a manner analogous to the provisions of Section 10.02(c) of this Agreement. MCIm shall not abandon any of its facilities by leaving them on SWBT's poles, within SWBT's conduit system, on SWBT's rights-of-way, at any location where they may block or obstruct access to SWBT's poles or any part of SWBT's conduit system, or on any public or private property (other than property owned or controlled by MCIm) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

18.03 **Removal Following Termination of License.** MCIm shall remove its facilities from SWBT's poles, ducts, conduits, or rights-of-way within sixty (60) days, or within such other period of time as shall be mutually agreeable to the Parties, after termination of the license authorizing the attachment of such facilities to SWBT's poles or the placement of such facilities in SWBT's ducts, conduits, or rights-of-way.

18.04 **Removal Following Replacement of Facilities.** MCIm shall remove facilities no longer in service from SWBT's poles or conduit system within sixty (60) days, or within such other period of time as shall be mutually agreeable to the Parties, after the date MCIm replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit provided, however, that removal of facilities from the maintenance duct shall be governed by Sections 12.04, 13.03, and 15.02 of this Agreement and not by this subsection.

18.05 **Removal to Avoid Forfeiture.** If the presence of MCIm's facilities on SWBT's poles or in SWBT's ducts, conduits, or rights-of-way would cause a forfeiture of the rights of SWBT to occupy the property where such pole, duct, conduit, or right-of-way is located, SWBT will promptly notify MCIm in writing and MCIm shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SWBT will give MCIm not less than 60 days from the date of notice to remove MCIm's facilities unless prior removal is required to prevent the forfeiture of SWBT's rights. At MCIm's request, the Parties will engage in good faith negotiations with each other, with joint users, and with third party property owners and cooperatively take such

other steps as may be necessary to avoid the unnecessary removal of MCIm's facilities in the face of a threatened forfeiture.

18.06 Notice of Completion of Removal Activities. MCIm shall give written notice to SWBT stating the date on which the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way has been completed. Charges shall continue to accrue with respect to such facilities until MCIm's facilities have been removed, pull mandrels (slugs) have been pulled if required by Section 18.01(b) of this Agreement, MCIm has plugged all previously occupied ducts at the entrances to SWBT's manholes as required by Section 18.01(c) of this Agreement, and the notice required by this section has been given.

18.07 Removal of Facilities by SWBT; Notice of Intent to Remove. If MCIm fails to remove its facilities from SWBT's poles or conduit system in accordance with the provisions of Sections 18.01-18.06 of this Agreement, SWBT may remove such facilities and store them at MCIm's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to MCIm for any injury, loss, or damage resulting from such actions. SWBT shall give MCIm not less than 60 days prior written notice of its intent to remove MCIm's facilities pursuant to this section. The notice shall state:

- (a) the date when SWBT plans to commence removal of MCIm's facilities, and that MCIm may remove the facilities at MCIm's sole cost and expense at any time before the date specified;
- (b) SWBT's plans with respect to disposition of the facilities removed; and
- (c) that MCIm's failure to remove the facilities or make alternative arrangements with SWBT for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.

18.08 Removal of Facilities by SWBT. If SWBT removes any of MCIm's facilities pursuant to Section 18, MCIm shall reimburse SWBT for SWBT's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

18.09 Reattachment or Subsequent Attachment Following Removal. After MCIm's facilities have been properly removed pursuant to the provisions of Section 18, neither the removed facilities nor replacement facilities shall be attached to SWBT's poles or placed in SWBT's conduit system until MCIm has first submitted new applications for the facilities and complied with the provisions of this Agreement.

Section 19: Fees, Charges, and Billing

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Key: Regular Text = MCIm/SWBT negotiated language; **Bold Text** = MCIm language disagreed to by SWBT; *Italics* = Missouri PSC Arbitration Award and stipulation language. ***Bold Italics*** = *Conformed to Award but disagreed to by SWBT*. **Bold Underline** = **SWBT language disagreed to by MCIm**.

19.01 One-time Contract Administration Fee. SWBT may charge MCIm a one-time contract administration fee as provided in Appendix I. Such fee shall be assessed for work performed in the initial processing of this Agreement, and MCIm agrees that such fee shall be non-refundable upon acceptance of this Agreement by SWBT. The one-time contract administration fee is not a fee assessed for individual license applications under this Agreement. **SWBT may also charge MCIm contract administration fees in connection with renegotiations of this Agreement at MCIm's request.**

19.02 Administrative Record-keeping Fees. SWBT may charge MCIm cost-based administrative record-keeping fees (e.g., fees associated with records and billing changes resulting from any sale, consolidation, or other transfer of MCIm's business or facilities, name changes, and the like) as provided in EXHIBIT I.

19.03 Semiannual Attachment and Occupancy Fees. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, MCIm will pay SWBT's semiannual charges as specified in APPENDIX I. These charges apply not only to pole attachments and conduit occupancy authorized pursuant to licenses subject to this Agreement but also to pole attachments and conduit occupancy, if any, commenced or continued by MCIm or its predecessors without authorization by SWBT.

19.04 Billing for Attachment and Occupancy Fees. Semiannual attachment and occupancy fees under this Agreement and licenses issued hereunder shall be payable in advance. Fees for pole attachments shall be based on the number of **MCIm's pole attachments for which licenses have been issued** as of the date of billing by SWBT, shall be determined in accordance with the schedule of charges set forth in APPENDIX I, and shall be payable semiannually in advance. Fees for conduit occupancy shall be based on the number of duct feet **subject to occupancy by occupied by or assigned to MCIm under licenses issued** as of the date of billing by SWBT, shall be determined in accordance with the schedule of charges set forth in APPENDIX I, and shall be payable semiannually in advance. **Such bills shall reference the license number, location of the route, and the last MCIm payment for the license. Pole attachment and conduit occupancy space assigned to MCIm prior to the issuance of a license shall be assessed and billed with respect to occupied space whether or not subject to current license and with respect to assigned space as well as occupied space in the same manner as if a license had been issued on the date of assignment.**

- (a) Bills shall be submitted to MCIm for two semiannual billing periods, the first period including charges for the months of January through

June and the second including charges for the months of July through December.

(b) Charges associated with newly licensed pole attachments and conduit occupancy shall be on a daily basis and billed with the next semiannual bill.

(c) Charges shall be adjusted and retroactively prorated on a daily basis following the removal of MCIm's facilities and shall be retroactively adjusted as a credit on the next semiannual bill.

19.05 Pre-license Survey Charges. With respect to pre-license surveys conducted by SWBT pursuant to Section 9.05 of this Agreement, MCIm shall pay SWBT's cost-based pre-license survey charges as provided in APPENDIX I.

19.06 Make-ready Charges. MCIm will pay make-ready charges, if any, as specified in this section and APPENDIX I. Except as otherwise specifically provided in other parts of this Agreement, MCIm will pay half of SWBT's make-ready charges at 50 percent job completion and the remainder at 100 percent completion. SWBT may, at its election, require MCIm to pay SWBT's out-of-pocket costs for materials as those costs are incurred and may require MCIm to pay outside contractor costs on the same schedule SWBT pays such outside contractors. Bills and invoices submitted by SWBT to MCIm for make-ready charges shall be due and payable 30 days after the date of the bill or invoice.

19.07 Due Date for Payment. Payment, Interest of Past Due Invoice, Remedies for Nonpayment, and Procedures for Disputing Charges. For fees and charges other than charges for make-ready work, each bill or invoice submitted by SWBT to MCIm shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice is received by MCIm. MCIm will pay each such bill or invoice on or before the stated due date. For make-ready work, the payment due date shall be not less than 30 days after the date of the bill or invoice is received.

(a) Interest on past due bills and invoices shall accrue at the rate of 12% per annum, or the maximum rate allowed by law, whichever is less.

(b) MCIm's failure to pay fees and charges may be grounds for terminating this Agreement and licenses subject to this Agreement.

(c) If MCIm fails to pay, when due, any fees or charges billed to MCIm under this Agreement, and any portion of such fees or charges remains unpaid more that 15 calendar days after the due date, SWBT may send MCIm a written notice advising MCIm that this Agreement, or specified licenses subject to this Agreement, may be terminated if such

fees or charges are not paid within 15 calendar days after the date of the notice. MCIm must remit to SWBT all such unpaid fees or charges, whether disputed or undisputed, within 15 days after the date of the notice. If MCIm pays disputed fees under protest, and it is later determined that such fees or any portion thereof should be refunded, the portion of fees to be refunded shall be refunded with interest at the rate of 12% per annum or the maximum rate allowed by law, whichever is less.

(d) MCIm may dispute such fees or charges by invoking the dispute resolution procedures set forth in Section 24B of this Agreement.

(e) If MCIm does not dispute such fees or charges and any portion of such undisputed fees or charges remains unpaid 30 calendar days after the date of the notice, SWBT may terminate this Agreement, terminate specified licenses identified in the notice, suspend the processing of pending applications for access to SWBT's poles, ducts, conduits, and rights-of-way located in this State, and refuse to accept further applications for access until such undisputed fees or charges, together with accrued interest thereon, have been paid in full.

19.08 Modification of Rates, Fees and Charges. Subject to applicable federal and state laws, rules, regulations, and commission orders, SWBT shall have the right to modify all rates, charges and fees set forth in this Agreement as provided in this section.

(a) Upon written notice to MCIm, SWBT may change, on a going-forward basis, the amounts of rates, fees or charges assessed under this Agreement. Pole attachment and conduit occupancy rates shall not be increased more than once annually.

(1) The notice shall state the effective date of the changes, which, in the event of a rate increase, shall be no earlier than the 60th day after the notice is given.

(2) The changes shall be effective on the effective date stated in the notice unless stayed or prohibited by a court or agency of competent jurisdiction.

(3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice.

(b) If the fees and charges set forth in the notice are not acceptable to MCIm, MCIm may, notwithstanding any other provisions of this

Agreement, terminate this Agreement or seek relief before a court or agency of competent jurisdiction.

19.08A Charges for Work Performed by SWBT Employees. Charges to MCIm for work performed by SWBT employees pursuant to this Agreement shall be determined under this section.

- (a) SWBT's charges to MCIm for pre-license survey, make-ready, and other engineering and administrative work authorized by MCIm and performed by SWBT employees shall be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work authorized.**
- (b) SWBT's charges to MCIm for other work performed by SWBT employees pursuant to this Agreement shall also be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work authorized.**
- (c) Disputes over SWBT's charges for work performed by SWBT employees, including disputes between the parties concerning the number of hours required to perform work authorized by MCIm, shall be subject to the dispute resolution procedures of Section 24B.**

19.09 Disputes over Charges and Charging Methodologies. The Parties acknowledge that the Pole Attachment Act grants the FCC regulatory authority over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way. The Parties further acknowledge that as of the date of this Agreement, this State has not elected to assume reverse preemptive regulatory authority over such rates, terms, and conditions by certifying to the FCC that it has made such election. Accordingly, complaints concerning and further challenges to SWBT's charging methodologies shall be brought, in the first instance, before the FCC in accordance with FCC procedural rules unless this State elects to preempt the regulation of pole attachment rates, terms, and conditions of access provided, however, that nothing contained in this section shall be construed as affecting the right of either Party to seek relief from the Missouri Public Service Commission in connection with the negotiation, arbitration, and approval of interconnection agreements under 47 U.S.C. § 252.

19.10 Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees set forth in this Agreement, including charges and fees set forth in Section 19 and APPENDIX I, shall be subject to all applicable federal and state laws, regulations, and commission orders, including but not limited to the Pole Attachment Act and rules, regulations, and commission orders issued thereunder.

Section 20: Insurance

20.01 Insurance Required. Applicant shall comply with the insurance requirements specified in this Section:

- (a) Unless MCIm has provided proof of self-insurance as permitted in Section 20.02 below, MCIm shall obtain and maintain in full force and effect, for so long as this Agreement remains in effect, insurance policies specified in APPENDIX IV of this Agreement. Each policy shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy.
- (b) Exclusions from coverage or deductibles, other than those expressly permitted in APPENDIX IV, must be approved in writing by SWBT.
- (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way on MCIm's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SWBT's behalf. MCIm shall be responsible for securing compliance by its contractors with this requirement and shall be liable to SWBT for any damages resulting from its failure to do so.
- (d) Self-insurance shall be permitted for persons and entities (including but not limited to MCIm and authorized contractors) meeting the self-insurance requirements of set forth in Section 20.02 of this Agreement.

20.02 Proof of Insurance or Self-Insurance. MCIm shall submit to SWBT adequate proof (as determined by SWBT) **of insurance by each company insuring MCIm to the effect that it has insured MCIm and SWBT under this Agreement and that it will not cancel any such policy of insurance issued to MCIm** except after 30 days written notice to SWBT. SWBT will accept certified proof of a person or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, only upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. SWBT will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in Appendix IV and SWBT is satisfied that such entity will be able to meet its liability obligations under this Agreement.

20.03 Licensing Contingent on Proof of Insurance. All insurance required in accordance with APPENDIX IV, or self-insurance as permitted in Section 20.02, must be in effect before SWBT will issue pole attachment or conduit occupancy licenses under this Agreement and shall remain in force until all of MCIIm's facilities have been removed from SWBT's poles, ducts, conduits, and rights-of-way.

Section 21: Termination

21.01 Termination of Agreement Due to Non-Use of Facilities. MCIIm shall, by written notice to SWBT, terminate this Agreement **and all licenses subject to this Agreement** if MCIIm ceases to do business in this State or ceases to make active use of any of SWBT's poles, ducts, conduits, and rights-of-way in this State.

21.02 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either Party, the aggrieved Party may give written notice of such claimed breach as provided in this section.

(a) The notice shall set forth in reasonable detail:

- (1) the conduct or circumstances complained of, together with the complaining Party's legal basis for asserting that a breach has occurred;
- (2) the action believed necessary to cure the alleged breach; and
- (3) any other matter the complaining Party desires to include in the notice.

(b) Except as provided in Section 25.02 and subsection (c) of this section, the complaining Party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given and (1) the breaching Party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching Party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either Party from invoking the dispute resolution procedures set forth in **Part A** at any time.

(c) Nothing contained in this section shall preclude either Party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other Party which threatens the complaining Party with irreparable injury, loss or damage without first giving the notice otherwise required by subsection (b).

Section 22: Amendments

22.01 **Amendments Shall Be In Writing.** Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.

Section 23: No Reciprocal Access To MCI's Poles, Ducts, Conduits, and Rights-of-Way

23.01 **No Reciprocal Access to MCI's Facilities.** This Agreement does not include provisions for reciprocal access by SWBT to MCI's poles, ducts, conduits, and rights-of-way.

Section 24: Confidentiality of Information

24.01 Information Provided by MCI to SWBT. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by MCI to SWBT in connection with this Agreement (including but not limited to information submitted in connection with MCI's applications for the assignment of pole attachment and occupancy space and for pole attachment and conduit occupancy licenses) shall be deemed to be "confidential" or "proprietary" information of MCI and shall be subject to the terms set forth in Section 24. Section 24 does not limit the use by SWBT of aggregate information relating to the occupancy and use of SWBT's poles, ducts, conduits, and rights-of-way by firms other than SWBT (that is, information submitted by MCI and aggregated by SWBT in a manner that does not identify MCI).

24.02 Access Limited to Persons with a Need to Know. Confidential information provided by MCI to SWBT in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 24.03-24.06.

24.03 Permitted Uses of MCI's Confidential Information. Notwithstanding the provisions of Sections 24.01 and 24.02 above, SWBT and persons acting on SWBT's behalf may utilize MCI's confidential information for the following purposes: (a) posting information, as necessary, to SWBT's outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SWBT's poles, ducts, conduits, and rights-of-way and any SWBT facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SWBT's obligations under this Agreement and similar agreements with third parties; (d) performing SWBT's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SWBT's poles, ducts, conduits, and rights-of-way are (or

may in the future be) available for SWBT's own use, and making planning, engineering, construction, and budgeting decisions relating to SWBT's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SWBT's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

24.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to MCIIm may be made available to third parties seeking access to SWBT's records under provisions, and subject to protections, equivalent to those contained in Section 7.03 of this Agreement.

24.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including MCIIm, concerning SWBT's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SWBT may utilize confidential information submitted by MCIIm in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests.

24.06 Other Uses of Confidential Information. No other uses of confidential information received from MCIIm pursuant to this Agreement are authorized or permitted without MCIIm's express written consent.

SECTION 24A: NOTICES

24A.01 Notices to MCIIm. All written notices required to be given to MCIIm shall be delivered or mailed to MCIIm's duly authorized agent, as designated in Part A.

24A.02 Notices to SWBT. Except as otherwise provided in APPENDIX VI ("Notices to SWBT"), all written notices required to be given to SWBT shall be delivered or mailed to SWBT's duly authorized agent or attorney, as designated in this section.

(a) Such notice may be delivered to SWBT's duly authorized agent or attorney in person or by agent or courier receipted delivery.

(b) Such notice may be mailed to SWBT's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

- (c) SWBT may authorize delivery of the notice by telephonic document transfer to SWBT's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.
- (d) Notices to SWBT relating to the geographic areas served by the 417 and 816 area codes shall be sent to the authorized agent or attorney designated below:

Name: Wayne White
Title: Utility Liaison Supervisor
Firm: Southwestern Bell Telephone Company
Address: 500 E. 8th, Room 598
City/State/Zip: Kansas City, Missouri 64106

- (e) Notices to SWBT relating to the geographic areas served by the 314 and 573 area codes shall be sent to the authorized agent or attorney designated below:

Name: Daniel Goodwin
Title: Utility Liaison Supervisor
Firm: Southwestern Bell Telephone Company
Address: 12930 Olive Street Road, Floor 2
City/State/Zip: Creve Couer, Missouri 63141

24A.03 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

Section 25: General Provisions

25.01 Effect on Licenses Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy licenses granted to MCI shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.

25.02 Part A of the Interconnection Agreement shall apply to this Agreement in full as if written herein verbatim. In the event of a conflict between any provision of Part A and this Agreement, this Agreement shall control but only as to matters involving this Attachment VI.

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____
Signature of SWBT's Authorized Officer/Employee

Name of SWBT's Authorized Officer/Employee (Printed or Typed)

Position/Title of SWBT's Authorized Officer/Employee

Date

MCImetro ACCESS TRANSMISSION SERVICE, INC.

By: _____
Signature of MCI's Authorized Officer/Employee

Name of Authorized Officer/Employee (Printed or Typed)

Position/Title of Authorized Officer/Employee

Date

APPENDIX I SCHEDULE OF FEES AND CHARGES

This Schedule of Fees and Charges, effective as of the _____ day of _____, 19____, is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way between Southwestern Bell Telephone Company ("SWBT") and MCI metro Access Transmission Services, Inc. ("MCI"). This schedule sets forth the fees and charges to be paid by MCI to SWBT pursuant to this Agreement and licenses subject to this Agreement.

A) Pole Attachment Fees

1) General

a) For billing purposes, pole attachments shall be considered i) to have commenced on the first to occur of the following dates: **the date of assignment (or provisional assignment) of pole attachment space**, the date a license for such pole attachment is issued, or the date of actual attachment; and ii) to have ended **on the date of actual removal of the attached facilities from SWBT's pole or the date MCI's assignment lapses or is relinquished by MCI**. Fees for licensed pole attachments shall be based on the number of pole attachments as of the date of billing by SWBT. For billing purposes, a single pole attachment includes the point of attachment and all facilities located in the usable space on the pole six inches above and six inches below the point of attachment, together with routine ancillary apparatus such as anchors, anchor/guy strands, drop wire drive rings and J-hooks, and other apparatus which does not interfere with the ability of SWBT to occupy or assign usable space on the pole other than the usable space licensed to MCI. Fees for pole space assignments and unauthorized pole attachments shall be billed in the same manner as if a license had been issued

b) Fees shall be payable semiannually in advance on the first days of January and July. Fees for new attachments shall be on a daily basis and billed with the next semiannual bill. Fees shall be adjusted and retroactively prorated on a daily basis following the removal of MCI's facilities and shall be retroactively adjusted as a credit on the next semiannual bill.

c) *Until such time as the FCC authorizes the charging of different rates to telecommunications carriers and CATV providers, SWBT shall determine annual rates for access by telecommunications carriers, including MCI, to SWBT's poles, ducts, conduits, and rights-of-way so that those rates shall be identical to those applied to CATV providers. Pole attachment and conduit occupancy rates shall not exceed the rates permitted under the Pole Attachment Act and applicable rules, regulations, and commission orders and shall be adjusted on a going-forward basis in*

accordance with methodologies established by or acceptable to the FCC. On March 14, 1997, the FCC, in CS Docket No. 97-98, In the Matter of Amendment of Rules and Policies Governing Pole Attachments, released a Notice of Proposed Rulemaking seeking comment on proposed modifications to the FCC's rules relating to the maximum just and reasonable rates utilities may charge for attachments made to poles, ducts, conduits, and rights-of-way. The FCC has stated that its rules will apply to all telecommunications carriers pending the effectiveness of new formulas required by the Telecommunications Act of 1996, which formulas shall not take effect prior to February 8, 2001. SWBT shall be permitted (or required) to adjust rates in accordance with FCC- approved methodologies as those methodologies may change from time to time. [Missouri Award No. 18]

d) No billing event fees will be assessed.

2) Fees

<u>(a) Semiannual Pole Attachment Fees</u>	<u>Semiannual Fee</u>
Per pole attachment (cable service only)	\$ <u>1.175</u>
Per pole attachment (telecommunications carriers)	\$ <u>1.175</u>
Per pole attachment (other)	\$ <u>N/A</u>

b) **If MCIm withdraws its application under Section 10 of this Agreement before SWBT responds to grant or deny the application or under Section 10.04 or 10.06, no fees shall be owed to SWBT for the conduit or poles referred to in such applications.**

B) Conduit Occupancy Fees

1) General

a) For billing purposes, conduit occupancy shall be considered to have i) begun on the first to occur of the following dates: **the date of assignment (or provisional assignment) of conduit occupancy space**, the date a license for such conduit occupancy is issued, or the date of actual occupancy; and ii) to have ended on **the last to occur of the following dates: the date conduit occupancy ends or the date MCIm's assignment lapses or is relinquished by MCIm**; provided, however, that occupancy shall not be considered to have ended until MCIm's facilities have been removed from SWBT's conduit system and required post-removal procedures (e.g., plugging ducts) have been completed. Fees for conduit space assignments and unauthorized conduit occupancy shall be billed in the same manner as if a license had been issued.

b) Fees shall be payable semiannually in advance on the first days of January and

July. Fees for new occupancy shall be prorated on a daily basis and billed with the next semiannual bill. Fees shall be adjusted and retroactively prorated on a daily basis following the removal of MCI's facilities and shall be retroactively adjusted as a credit on the next semiannual bill.

c) Fees for conduit occupancy shall be based on the number of duct feet of conduit subject to billing.

d) *Until such time as the FCC authorizes the charging of different rates to telecommunications carriers and CATV providers, SWBT shall determine annual rates for access by telecommunications carriers, including MCI, to SWBT's poles, ducts, conduits, and rights-of-way so that those rates shall be identical to those applied to CATV providers. Pole attachment and conduit occupancy rates shall not exceed the rates permitted under the Pole Attachment Act and applicable rules, regulations, and commission orders and shall be adjusted on a going-forward basis in accordance with methodologies established by or acceptable to the FCC. On March 14, 1997, the FCC, in CS Docket No. 97-98, In the Matter of Amendment of Rules and Policies Governing Pole Attachments, released a Notice of Proposed Rulemaking seeking comment on proposed modifications to the FCC's rules relating to the maximum just and reasonable rates utilities may charge for attachments made to poles, ducts, conduits, and rights-of-way. The FCC has stated that its rules will apply to all telecommunications carriers pending the effectiveness of new formulas required by the Telecommunications Act of 1996, which formulas shall not take effect prior to February 8, 2001. SWBT shall be permitted (or required) to adjust rates in accordance with FCC-approved methodologies as those methodologies may change from time to time.. [Missouri Award No. 18]*

e) No billing events fee shall be assessed.

(2) Fees

Semiannual Per Foot Conduit Occupancy Fees	Semiannual Fee
a) Full duct/Per foot (cable service only)	\$ <u>0.20/ft</u>
Full duct/Per foot (telecommunications carriers)	\$ <u>0.20/ft</u>
Full duct/Per foot (other)	\$ <u>N/A</u>
Half duct/Per foot (cable service only)	\$ <u>0.10/ft</u>
Half duct/Per foot (telecommunications carriers)	\$ <u>0.10/ft</u>
Half duct/Per foot (other)	\$ <u>N/A</u>
b) Facility footage shall be measured i) from the center of one manhole to the center of an adjacent manhole if the facility runs between two manholes or ii) from the center of a manhole to the end of a duct not terminated in a manhole.	

- c) **If two or more facilities occupy a duct, regardless of whether it has been subdivided by inner duct or not, a semiannual full duct conduit occupancy fee will be charged as a maximum charge.**
 - d) A semiannual half duct occupancy fee will apply to the first facility placed by MCIm in a previously unoccupied duct that has not been subdivided by inner duct if, and only if, the presence of MCIm's facility does not render the other half of the duct unusable by others, otherwise a full duct occupancy fee will apply.
 - e) All facilities placed by MCIm within a single inner duct shall be considered to be a single facility and only a single semiannual half duct conduit occupancy fee will apply to the entire inner duct without regard to the number of facilities placed by MCIm in that inner duct.
 - f) **If MCIm withdraws its application under Section 10 of this Agreement before SWBT responds to grant or deny the application or under Section 10.04 or 10.06, no fees shall be owed to SWBT for the conduit or poles referred to in such applications.**
- C) **Application Fees, Contract Administration Fees and Administrative Record Keeping Fees.** The one-time contract administration fee shall be \$250.00. (The one-time contract administration is a fee associated with execution of this Agreement is not applicable to individual license applications.)) No fees shall be charged for the submission of individual applications to SWBT for pole attachment or conduit occupancy licenses or for the provisional assignment to MCIm of pole, duct, or conduit space. Fees for processing access applications shall be determined in accordance with D) below. A one time contract administration fee of \$250.00 shall be due and payable to SWBT at the time of execution of the Master Agreement. **Additional contract administration fees of \$250.00 may be charged by SWBT in connection with renegotiations of the Master Agreement at MCIm's request. SWBT may charge MCIm administrative record-keeping fees not exceeding \$125.00 in connection with records and billing changes resulting from the sale, consolidation, or other transfer of MCIm's business or facilities, name changes, and the like.**

D) Other Charges

Computation. Except as otherwise specifically provided in this Agreement, this Attachment, or the order of any court or regulatory agency of competent jurisdiction, charges for all work performed by SWBT shall be based on the pricing provisions in the Pole Attachment Act. *Until the FCC completes its determination of access to poles and conduits, SWBT shall charge MCIm the same rates charged to CATV providers. Unless the FCC rules to the contrary, SWBT shall determine all administrative fees and other charges under the Master Agreement (including charges for work performed by SWBT personnel) in a manner identical to that applied to CATV providers.* [Missouri Award No. 18]

Southwestern Bell Telephone Company

By: _____

Its: _____

Date: _____

MCImetro Access Transmission Services, Inc.

By: _____

Its: _____

Date: _____

**APPENDIX II
IDENTIFICATION OF APPLICANT**

Applicant's legal name is: _____

Applicant's principal place of business is located in the State of _____

Applicant does business under the following assumed
names: _____

Applicant is:

- ☐ a corporation organized under the laws of the State of _____ charter
no. _____;
- ☐ a partnership organized under the laws of the State of _____; or
- ☐ another entity, as follows: _____

Applicant represents that Applicant is:

- ☐ (1) a cable television system seeking a pole attachment or conduit occupancy license
solely to provide cable service;
- ☐ (2) a telecommunications carrier; or
- ☐ (3) a person or entity which is neither (1) nor (2) above, as follows:

ATTACHMENT VI

Applicant's Name (Printed or Typed)

By: _____

Its: _____

Date: _____